IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1753 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RUBINA OIL TRADING CO - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR KIRIT I PATEL for Petitioner(s) : 1,
Mr. HM PRACHHAK, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/01/2006

ORAL JUDGMENT

By way of this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the revisional authority, i.e., Deputy Secretary, Food & Civil Supplies Department, State of Gujarat dated 30th

January 1999 in dismissing the same and confirming the order passed by the Controller of Food & Civil Supplies, Ahmedabad, dated 9th July 1998 in confirming the order passed by the Deputy Director in cancelling the licence to sell solvent which was in favour of the petitioner.

2. The petitioner was doing the business as a Commission Agent as retailer/wholesaler to sell solvent and the petitioner got the licence to sell the solvent issued by the Deputy Controller, Food and Civil Supplies Department, Ahmedabad, dated 17th February 1998 issued under the provisions of Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981. It is required to be noted that the petitioner was issued the licence on 17th February 1998 and within one month only the petitioner was found to have been indulging in malpractice and on inspection which took place on 19th March 1998, it was found that the petitioner was selling the solvent to the rickshaw driver which was for the purpose other than industrial purpose. It was also found that the petitioner purchased the stock of solvent without bill and he was not having Bill Book also. As the petitioner was found to have committed breach of the Control Order as well as Condition of Licence, a show cause notice came to be issued upon the petitioner dated 25.3.1998 whereby he was required to show cause why the licence to sell

solvent should not be cancelled. The petitioner replied to the show cause notice on 5.4.1998 and after giving opportunity to the petitioner and considering his reply, the Deputy Controller, Food and Civil Supplies, Ahmedabad, not accepted the explanation given by the petitioner and passed an order on 15.4.1998 cancelling the licence to sell the solvent by holding that the petitioner has committed breach of Control Order as well as Condition of Licence. Being aggrieved and dissatisfied with the order passed by the Deputy Controller, Food & Civil Supplies, Ahmedabad, dated 15.4.1998, the petitioner preferred appeal before the Controller, Food & Civil Supplies, Ahmedabad, who by order dated 10th July 1998 dismissed the said appeal and confirmed the order passed by the Deputy Controller. Being aggrieved and dissatisfied with the order passed by the Controller, Food & Civil Supplies, Ahmedabad, dated 10th July 1998, the petitioner preferred revision application before the State Government and the Deputy Secretary, Food & Civil Supplies, State of Gujarat, by order dated 30th January 1999 dismissed the said revision application and confirmed the order passed by both the authorities below. Being aggrieved and dissatisfied with the aforesaid three orders, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. It appears from the record that during the pendency of the present petition, the petitioner preferred one Civil Application No. 15539 of 1999 with a prayer for order that the impugned orders may not come in the way of the petitioner if the petitioner moves an appropriate application for renewal of licence, as during pendency of the present Special Civil Application the tenure of the licence which was set aside was to expire. The learned Single Judge of this Court [Coram: M.R. Calla, J., as he then was] by order dated 24.4.2000 passed the order that the pendency of the application against cancellation of the licence held by the petitioner earlier shall be no impediment for consideration of the application of the petitioner for grant of licence afresh in accordance with rule. The learned advocate appearing on behalf of the petitioner has submitted that he has no instruction what happened subsequently. As the present Special Civil Application has come up for Final Hearing, the same is heard finally on merits.

4. Shri KI Patel, learned advocate appearing on behalf of the petitioner has vehemently submitted that all the 3 authorities below have materially erred in cancelling the licence which was given in favour of the petitioner to sell solvent. He has also further submitted that there was mistake in calculation of the stock by the authorities though

the same was correctly shown. The stock purchased was 860 litres, the Opening Stock as on 17th March 1998 was shown at 295 litres, the Closing Stock was shown as 430 litres and the balance which was found as 430 litres was correct. However, by mistake the authority arriving at the figure of 390 litres which was factually the incorrect figure as the balance stock the authorities below have come to the conclusion that the stock was not properly maintained. It is therefore requested to allow the present Special Civil Application. Shri Patel has also further submitted that so far as sale of 500 M.L., to rickshaw driver is concerned, all the 3 authorities have materially erred in not accepting the explanation on behalf of the petitioner that the same was sold to the said rickshawala not for rickshaw purposes but it was to be used by his friend who was a Watch mechanic. It is further submitted that in view of sale of 500 M.L., solvent for the purpose other than industrial purpose the licence has been cancelled and therefore it is requested to allow the present Special Civil Application. He has further submitted that even the learned Single Judge of this Court has passed the order in aforesaid Civil Application No.15539 of 2005 to the effect that pendency of the petition against cancellation of licence will not come in the way of the petitioner for renewal of the licence and therefore it is requested to allow the present Special Civil

Application and direct the respondents to renew the licence.

5. Shri Prachhak, learned AGP appearing on behalf of the respondents while opposing the present Special Civil Application has submitted that all the 3 authorities below have concurrently found that the petitioner has committed breach of the Control Order as well as the licence. He has further submitted that the petitioner was found selling the solvent to the rickshaw-driver which was for the purpose other than industrial purpose and therefore the licence of the petitioner to sell the solvent has been rightly cancelled by all the 3 authorities below. He has further submitted that, that order passed by the learned Single Judge of this Court in aforesaid Civil Application No. 15539 of 2005 may not be construed to mean that the present Special Civil Application is not required to be decided on merits. He has further submitted that only in event if this Hon'ble Court allows the present Special Civil Application by setting aside the orders cancelling the licence passed by the authorities below the question of renewal will require consideration. He has submitted that a licence may require renewal if the same is in existence but the same may not require renewal when it is already cancelled. It is therefore requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the petitioner was issued the licence in the month of February 1998 more particularly on 17th February 1998 and within the period of one month only the petitioner was found to be indulging in selling the solvent for the purpose other than industrial purpose. On 19th March 1998 the petitioner was found to be selling the solvent to the rickshaw-driver. So far as sale of solvent to the rickshaw-driver, the petitioner has changed his version at different places and all the 3 authorities below have rightly not accepted the explanation on behalf of the petitioner. The fact remains that even the petitioner has also admitted that he was selling the solvent, even it may be 500 ML to the rickshaw-driver. The contention and the explanation on behalf of the petitioner is that the said solvent was not to be used for rickshaw by the rickshawwala but was required to be used for some other purpose. The said explanation cannot be accepted. It is a common experience that the rickshawwalas are using the solvent in their rickshaws in place of petrol as fuel and thereby creating air pollution. When all the three authorities below have concurrently found that the petitioner has committed breach of the Control Order as well as the condition of licence and looking to the evidence on record, it cannot be said that the

orders passed by all the 3 authorities below in cancelling the licence to sell solvent are in any way illegal, perverse, arbitrary and/or contrary to the provisions of the Act. So far as the contention on behalf of the petitioner that in view of the order passed by the Civil Application No. 15539 of 2005 the respondents were required to renew the licence and/or consider the case for renewal of licence is concerned, it is required to be noted that, that does not mean that the present Special Civil Application is not required to be decided on merits. The question of renewal of the licence may arise only in event if ultimately the petition is allowed on merits and the orders passed by all the 3 authorities below and the order of cancellation of licence are set aside. As stated above, a licence would require renewal only when it is in existence, and if a licence is cancelled due to indulgence in malpractice and/or for any other reason, in that case there is no question of considering the case for renewal of licence. In the present case, the orders passed by all the 3 authorities below cancelling the licence being just and proper, they are not required to be quashed and set aside and the contention raised on behalf of the petitioner that the application of the petitioner was required to be considered and the present Special Civil Application requires to be disposed of accordingly cannot be accepted. For the reasons stated above, the petition fails. Rule is

discharged, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.